



For a thriving New England

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November 20, 2017

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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for the violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Connecticut seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is twofold. First, Island Cove Marina, LLC and Island Cove Too, LLC (hereinafter collectively referred to as “Island Cove”) are discharging stormwater directly associated with boat storage, repair, and transportation at 47 Sunrise Ave., Old Saybrook, Connecticut 06475 (the “Facility”), to the waters of the United States without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Island Cove has not sought, obtained coverage under, or complied with the conditions of an individual National Pollutant Discharge Elimination System (“NPDES”)

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<sup>1</sup> CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Lower Connecticut watershed for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF’s membership includes people who live in or near the Lower Connecticut watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”)<sup>2</sup> issued by the Connecticut Department of Energy and Environmental Protection (“DEEP”) in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1), 122.26(e)(1). In addition, Island Cove is required to obtain individual NPDES permit coverage for process wastewater discharges that may result from activities such as hull pressure washing, flushing boat engines and cleaning fuel filters.

## **BACKGROUND**

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into Long Island Sound and other receiving waters. The consensus among agencies and water quality specialists is that stormwater<sup>3</sup> pollution accounts for more than half of the total pollution entering the marine environment each year.

DEEP has designated more than 1000 river miles and 6000 acres of larger waterbodies in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.<sup>4</sup> For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as the primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility onto sloped surfaces, drainage paths, ramps, and ditches and thence into the Connecticut River (Segment ID CT-E1\_029-SB). This segment flows into a downstream segment of the Connecticut River, which is defined by the Environmental Protection Agency (“EPA”) as part of the Long Island Sound’s inner estuary (Segment ID CT-E1\_024-SB). Segment CT-E1\_024-SB flows into the Long Island Sound and the Atlantic Ocean. DEEP has classified Segments CT-E1\_029-SB and CT-E1\_024-SB of the Connecticut River as Class SB Surface Waters.<sup>5</sup>

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<sup>2</sup> CONNECTICUT DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION, GENERAL PERMIT FOR THE DISCHARGE OF STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY (October 1, 2016), [http://www.ct.gov/dep/lib/dep/Permits\\_and\\_Licenses/Water\\_Discharge\\_General\\_Permits/storm\\_indust\\_gp\\_100111.pdf](http://www.ct.gov/dep/lib/dep/Permits_and_Licenses/Water_Discharge_General_Permits/storm_indust_gp_100111.pdf) [hereinafter GENERAL PERMIT]. Connecticut’s General Permit for the Discharge of Stormwater Associated with Industrial Activity was first issued on October 1, 1992. It has been reissued and/or modified several times since then. The current General Permit became effective on October 1, 2016, and will expire on September 30, 2018.

<sup>3</sup> Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. *See* 40 C.F.R. § 122.26(b)(13).

<sup>4</sup> *See* U.S. ENVTL. PROTECTION AGENCY, CONNECTICUT WATER QUALITY ASSESSMENT REPORT (2012), [https://iaspub.epa.gov/waters10/attains\\_state.control?p\\_state=CT&p\\_cycle=2012](https://iaspub.epa.gov/waters10/attains_state.control?p_state=CT&p_cycle=2012).

<sup>5</sup> *See* STATE OF CONNECTICUT, OLD SAYBROOK & OLD LYME WATERSHED SUMMARY 1–4 (August 2014), [http://www.ct.gov/deep/lib/deep/water/tmdl/statewidebacteria/final\\_estuary\\_13-old\\_saybrook\\_old\\_lyme\\_-\\_complete.pdf](http://www.ct.gov/deep/lib/deep/water/tmdl/statewidebacteria/final_estuary_13-old_saybrook_old_lyme_-_complete.pdf); *see also* U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY

Under the Water Quality Standards for the State of Connecticut, Class SB waterbodies are designated for the following uses: “habitat for marine fish and other aquatic life and wildlife; commercial shellfish harvesting; recreation; navigation; and industrial water supply.”<sup>6</sup> The Connecticut Water Quality Standards establish minimum parameters to support the designated uses, including but not limited to aesthetics, dissolved oxygen, sludge, oil and grease, scum, color, suspended and settleable solids, silt or sand deposits, turbidity, bacteria, taste and odor, pH, temperature, chemicals, nutrients, and biological condition.<sup>7</sup>

DEEP has designated the Connecticut River (Segment ID CT-E1\_029-SB) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet its designated use of fish consumption and recreation.<sup>8</sup> DEEP has determined that Segment CT-E1\_029-SB is impaired for polychlorinated biphenyls (PCBs), and that probable sources contributing to this impairment are unknown.<sup>9</sup> Illegal stormwater discharges from the Facility contribute to Segment CT-E1\_029-SB’s impaired status.

DEEP has designated the downstream Connecticut River (Segment ID CT-E1\_024-SB) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d) for failure to meet and support its designated use of fish consumption.<sup>10</sup> DEEP has determined that Segment CT-E1\_024-SB is impaired for pathogens (fecal coliform) and polychlorinated biphenyls (PCBs), and that probable sources contributing to this impairment include marina/boating sanitary on-vessel discharges and urban stormwater, in addition to other unknown sources.<sup>11</sup> Illegal

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REPORT FOR LIS EB INNER – CONNECTICUT RIVER (LOWER) ESSEX (2014),  
[https://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=CT-E1\\_029-SB&p\\_cycle=2014](https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=CT-E1_029-SB&p_cycle=2014);  
U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR LIS EB INNER – CONNECTICUT RIVER (MOUTH), OLD LYME (2014),  
[https://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=CT-E1\\_024-SB&p\\_list\\_id=CT-E1\\_024-SB&p\\_cycle=2014](https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=CT-E1_024-SB&p_list_id=CT-E1_024-SB&p_cycle=2014).

<sup>6</sup> See STATE OF CONNECTICUT, REGULATION OF CONNECTICUT WATER QUALITY STANDARDS 19 (2012), <http://www.ct.gov/deep/lib/deep/regulations/22a/22a-426-1through9.pdf>.

<sup>7</sup> *Id.* at 46–52.

<sup>8</sup> See CONNECTICUT DEP’T OF ENERGY AND ENVIRONMENTAL PROTECTION, 2016 STATE OF CONNECTICUT INTEGRATED WATER QUALITY REPORT (2016), [http://www.ct.gov/deep/lib/deep/water/water\\_quality\\_management/305b/2016\\_iwqr\\_draft.pdf](http://www.ct.gov/deep/lib/deep/water/water_quality_management/305b/2016_iwqr_draft.pdf) [hereinafter 2016 WATER QUALITY REPORT].

<sup>9</sup> See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR LIS EB INNER – CONNECTICUT RIVER (LOWER), ESSEX (2014), [https://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=CT-E1\\_029-SB&p\\_list\\_id=CT-E1\\_029-SB&p\\_cycle=2014](https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=CT-E1_029-SB&p_list_id=CT-E1_029-SB&p_cycle=2014).

<sup>10</sup> See 2016 WATER QUALITY REPORT, *supra* note 8.

<sup>11</sup> See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR LIS EB INNER – CONNECTICUT RIVER (MOUTH), OLD LYME (2014),

stormwater discharges from the Facility contribute to Segment CT-E1\_024-SB's impaired status.

Long Island Sound ("LIS") is the ultimate receiving water for discharges from the Facility. DEEP has designated the Long Island Sound for uses including shellfish harvesting and recreation. However, LIS consistently fails to sustain these uses and fails to meet state water quality standards. Thus, DEEP designated LIS as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d).<sup>12</sup> Illegal stormwater discharges from this Facility contribute to the Sound's impaired status.

Stormwater is water from precipitation events that flows across the ground and pavement after rain events or after snow and ice melt.<sup>13</sup> Industrial activities, such as material handling and storage, vessel refinishing, waxing, and painting, vessel and equipment fluid changes, equipment maintenance and cleaning, boat and vehicle exterior washing, industrial processing, mechanical repairs, fueling, engine flushing, or other operations that occur at industrial facilities, may be exposed to stormwater flow.<sup>14</sup> Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.<sup>15</sup>

In order to discharge stormwater lawfully, Island Cove is required to apply for coverage under a Clean Water Act National Pollutant Discharge Elimination System discharge permit, such as the General Permit issued by DEEP. Island Cove has failed to obtain a General Permit for the Discharge of Stormwater Associated with Industrial Activity issued by DEEP or any other valid authorization at any time. Therefore, Island Cove is operating in violation of the Clean Water Act.

### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Island Cove Marina, LLC, Island Cove Too, LLC, and the Facility owner(s) are the persons, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Island Cove has operated the Facility since at least 1999 and currently advertises as the operator of the Facility.<sup>16</sup> Island Cove and its agents and directors—including

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[https://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=CT-E1\\_024-SB&p\\_list\\_id=CT-E1\\_024-SB&p\\_cycle=2014](https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=CT-E1_024-SB&p_list_id=CT-E1_024-SB&p_cycle=2014).

<sup>12</sup> See 2016 WATER QUALITY REPORT, *supra* note 8.

<sup>13</sup> See 40 C.F.R. § 122.26(b)(13).

<sup>14</sup> See 40 C.F.R. § 122.26(b)(14).

<sup>15</sup> See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

<sup>16</sup> See CONNECTICUT SEC'y OF THE STATE BUSINESS INQUIRY: ISLAND COVE MARINA, LLC, <http://www.concord-sots.ct.gov/CONCORD/online?sn=PublicInquiry&eid=9740> (last visited November 13, 2017).

but not limited to Jon A. Manafort, Owner<sup>17</sup>—have operational control over the day-to-day industrial activities at this Facility. Therefore, the Facility owner(s) and operator(s) are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the boat repair, storage, water transportation, and yacht club Facility located at 47 Sunrise Ave., Old Saybrook, CT 06475.

### **ACTIVITIES ALLEGED TO BE VIOLATIONS**

Island Cove has, and continues to, engage in “industrial activities,” and its operations fall under SIC Codes 4493, 373, 7797, and 5551, within the meaning of 40 C.F.R. §§ 122.26(b)(14)(ii) & (viii).<sup>18</sup> Because the Facility has primary SIC Codes of 4493, 373, 7797, and 5551 and discharges stormwater associated with industrial activity, Island Cove is required to apply for, obtain coverage under, and comply with the requirements of the General Permit or an individual NPDES permit. In addition, Island Cove is required to obtain individual NPDES permit coverage for process wastewater discharges that may result from activities such as hull pressure washing, flushing boat engines and cleaning fuel filters. Island Cove has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: boat transportation, storage, winterization and maintenance; fueling; flushing boats engines and draining blocks or manifolds; hull pressure washing and waxing, repairing engines; cleaning and changing oil filters and fuel filters; handling, transferring, storing and disposing of materials; and shipboard processes resulting in improper discharges to storm sewers or into receiving water. Heavy machinery and other equipment is operated and stored outdoors, therefore being exposed to and corroded by the elements. Vehicles driving on and off the Facility site track pollutants off-site.

Industrial equipment, materials and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the Facility, picking up paint solids, heavy metals, total suspended solids (TSS), total dissolved solids (TDS), diesel/gas fuel, ethylene glycol (anti-freeze), acid and alkaline wastes, solvents, oil, low density waste (floatables), trash, and other pollutants associated with the Facility’s operations. The polluted runoff is then

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<sup>17</sup> *Id.*

<sup>18</sup> See GENERAL PERMIT, *supra* note 2, at §§ 5(f)(8)(Sector H), 5(f)(9)(Sector I) (specifying that activities Covered include: Marinas, Yacht Clubs and Boat Dealer facilities (SIC Codes 4493, certain 7997 and 5551), which are subject to the requirements of the General Permit for stormwater discharges—Ship and Boat Building and Repair (SIC Code 373) are also subject to the requirements of the General Permit for stormwater discharges).

conveyed off-site into waters of the United States via man-made collection systems, sloped surfaces and site grading, shallow subsurface hydrological connections, and through the operation of gravity.

## **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED**

### **a. Island Cove is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.**

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>19</sup> Island Cove's industrial activity at its Facility has caused and continues to cause a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from the Facility on at least each and every day that there has been a measurable rain event of above 0.1 inches.<sup>20</sup> There have been many such storm events since 1999.

The Facility is generating pollutants from and through at least the following point sources: travel lifts, marine railways and ramp systems, catch basins and drains, boats, machines and equipment left and stored outdoors, fueling stations, vehicles driving on and off the Facility, and other conveyances to the Connecticut River and other waters of the United States.<sup>21</sup> The Connecticut River eventually flows into the Long Island Sound and the Atlantic Ocean, all of which are "waters of the United States," as defined in 40 C.F.R. § 122.2, and therefore are also "navigable waters," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

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<sup>19</sup> See 33 U.S.C. § 1311(a).

<sup>20</sup> EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

<sup>21</sup> These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. CLF specifically puts Island Cove on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2 (stating that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man[]").



**b. Island Cove is Violating the Clean Water Act by Failing to Obtain Coverage Under and Failing to Comply with the Requirements of the General Permit.**

Island Cove is an industrial discharger with primary SIC Codes of 4493, 373, 7797, and 5551, which means that pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Island Cove is obligated to apply for coverage under the General Permit or an individual NPDES permit for its discharge of polluted stormwater and must comply at all times with the conditions of its permit. By failing to apply for, obtain coverage under, and comply with the requirements of the General Permit or an individual permit, Island Cove is violating CWA Sections 301(a), 402(a), 402(p), 33 U.S.C. §§ 1311(a), 1342(a), 1342(p), 40 C.F.R. § 122.26(c)(1), and 40 C.F.R. § 122.26(e)(1).<sup>22</sup> The primary General Permit requirements that the Island Cove has failed and continues to fail to meet are detailed below.

**1) Island Cove must submit a registration form to DEEP to be covered under the General Permit.**

To be eligible to discharge under the General Permit, Island Cove must file a registration form with DEEP.<sup>23</sup> To register, Island Cove is required, among other things, to include a description of all stormwater discharges, including descriptions of: the conveyances, outfalls or channelized flows that run off the site, the property and amount of impervious surfaces in square feet or acres, the immediate surface water body or wetland to which the stormwater conveyance, outfall and/or runoff discharges, and the name of the watershed and nearest waterbody to which the site discharges and its Water Quality Classification.<sup>24</sup> Island Cove has failed to prepare and file a registration form.<sup>25</sup>

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<sup>22</sup> Sections 301(a), 402(a), and 402(p) make it unlawful for Island Cove to discharge stormwater associated with industrial activity without obtaining and complying with the conditions of a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and 122.26(e)(1) require Island Cove to apply for a NPDES permit that covers its discharge of stormwater associated with industrial activity.

<sup>23</sup> See GENERAL PERMIT, *supra* note 2, at § 4 (specifying that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a registration form to DEEP is required in order to obtain coverage under the General Permit). CLF does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage. For example, if the Facility is discharging process wastewater, such as washwater, or has any other non-stormwater discharge containing pollutants which is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also constitutes a violation of 33 U.S.C. §§ 1311(a), 1342(p).

<sup>24</sup> See GENERAL PERMIT, *supra* note 2, at § 4(c)(2)(F).

<sup>25</sup> A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database, and DEEP's database, reveals that no registration form has been submitted for the Facility. See U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE HISTORY ONLINE, <https://echo.epa.gov/> (last visited November 13, 2017); CONNECTICUT DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION, GENERAL PERMIT REGISTRATION FOR THE DISCHARGE OF STORMWATER ASSOCIATED WITH INDUSTRIAL

## **2) Island Cove must develop and implement a Stormwater Pollution Prevention Plan.**

Island Cove must also prepare, make available, and implement a Stormwater Pollution Prevention Plan (“SWPPP”) in accordance with schedules established in the General Permit.<sup>26</sup> Among other things, the SWPPP must include: a facility description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures, and schedules and procedures for implementation of control measures, monitoring and inspections, as well as certain additional requirements specific to marinas.<sup>27</sup> Island Cove has failed to develop, make available, and implement a compliant SWPPP.<sup>28</sup>

## **3) Island Cove must implement control measures and Best Management Practices.**

Facilities that become authorized to discharge stormwater under the General Permit must operate in accordance with mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.<sup>29</sup> These BMPs include, but are not limited to: minimizing exposure of stormwater to certain materials, for example by means of a permanent roof or cover;<sup>30</sup> managing stormwater runoff, for example through implementing measures such as diverting uncontaminated run-on to avoid areas that may contribute to pollutants, or through collection and reuse or treatment measures;<sup>31</sup> preventative maintenance and testing;<sup>32</sup> spill prevention and response procedures;<sup>33</sup> collecting discharged wastewater in a sanitary sewer or pumping and hauling it by a licensed waste hauler;<sup>34</sup> hanging plastic barriers or tarpaulins during blasting or painting operations to

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ACTIVITY (database updated November 13, 2017).,

[http://www.depdata.ct.gov/permit/Industrial\\_Stormwater\\_Reg\\_Report.pdf](http://www.depdata.ct.gov/permit/Industrial_Stormwater_Reg_Report.pdf); CONNECTICUT DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION, NO EXPOSURE FOR THE DISCHARGE OF STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY (database updated November 13, 2017), [http://www.depdata.ct.gov/permit/Industrial\\_Stormwater\\_No\\_Exposure\\_Cert\\_Report.pdf](http://www.depdata.ct.gov/permit/Industrial_Stormwater_No_Exposure_Cert_Report.pdf).

<sup>26</sup> See GENERAL PERMIT, *supra* note 2, at § 5(c).

<sup>27</sup> *Id.* at § 5(f)(8)(Sector H)–(f)(9)(Sector I).

<sup>28</sup> See *supra* note 26. A thorough search of EPA’s and DEEP’s records reveals that as of the date of this Notice, no SWPPP has been prepared or submitted for the Facility as part of the Registration for permit coverage. On information and belief, no SWPPP exists.

<sup>29</sup> See GENERAL PERMIT, *supra* note 2, at §§ 5(b), 5(f) (detailing both general BMPs and sector-specific BMPs).

<sup>30</sup> *Id.* at § 5(b)(5); *id.* at § 5(c)(2)(D)(ii) (requiring an inventory of exposed materials).

<sup>31</sup> *Id.* at § 5(b)(7).

<sup>32</sup> *Id.* at § 5(b)(8).

<sup>33</sup> *Id.* at § 5(b)(9).

<sup>34</sup> *Id.* at §§ 5(f)(8)(Sector H)(B)(i), 5(f)(9)(Sector I)(B)(i).



contain debris;<sup>35</sup> and storing and properly disposing of spent abrasive materials if generated at the Facility.<sup>36</sup> On information and belief, Island Cove has not implemented required control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice.

#### **4) Island Cove must conduct routine site inspections.**

Facilities that become authorized to discharge under the General Permit must conduct routine comprehensive inspections of areas where industrial materials or activities are exposed to precipitation and must ensure that all stormwater control measures comply with the SWPPP.<sup>37</sup> There are two different kinds of inspections required by the General Permit. At least twice a year, qualified personnel must visually inspect material handling areas and other potential sources of pollution, and prepare a report summarizing the details and results of the inspection.<sup>38</sup> In addition, Island Cove must also ensure that qualified personnel conduct monthly visual inspections of equipment and specific sensitive areas of the site.<sup>39</sup> Furthermore, as a boat repair and water transportation facility, the Facility must also implement additional inspection requirements, including monthly inspections of the following areas of the site: pressure washing areas; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.<sup>40</sup> Moreover, at least quarterly, the Facility must also inspect stormwater management devices (e.g., oil and water separators, sediment traps or chambers, pressure wash collection systems), in addition to inspecting facility equipment and systems to prevent breakdowns or failures resulting in discharges of pollutants to surface waters.<sup>41</sup> The schedule of these inspections as well as the records and reports resulting from these inspections must be included in the SWPPP.<sup>42</sup> On information and belief, Island Cove has failed to conduct the required routine inspections.

#### **5) Island Cove must comply with monitoring requirements.**

Facilities authorized under the General Permit must collect and analyze stormwater samples, document monitoring activities, and submit reports to DEEP.<sup>43</sup> The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEEP may require

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<sup>35</sup> *Id.* at §§ 5(f)(8)(Sector H)(B)(iii), 5(f)(9)(Sector I)(B)(iii).

<sup>36</sup> *Id.* at §§ 5(f)(8)(Sector H)(B)(iv), 5(f)(9)(Sector I)(B)(iv).

<sup>37</sup> *Id.* at § 5(d).

<sup>38</sup> *Id.* at § 5(d)(1).

<sup>39</sup> *Id.* at § 5(d)(2).

<sup>40</sup> *Id.* at §§ 5(f)(8)(Sector H)(D), 5(f)(9)(Sector I)(D).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at § 5(d).

<sup>43</sup> *Id.* at §§ 5(e), 5(h).

additional individualized monitoring as well.<sup>44</sup> Further, because the Facility is a marina, yacht club, boat dealer, and boat repair and water transportation facility, more frequent quarterly and semi-annual monitoring is required as well as additional sector-specific benchmark monitoring.<sup>45</sup> In particular, because the Connecticut River and downstream receiving waters are “impaired waters” under 33 U.S.C. § 1313(d), Island Cove must monitor for all pollutants for which the Connecticut River is impaired.<sup>46</sup>

Samples must be collected from any discharge resulting from a storm event that occurs at least 72 hours after any previous storm event generating a stormwater discharge, and must be taken during the same storm event, if feasible.<sup>47</sup> These samples must be tested for pollution according to the methods prescribed in 40 C.F.R. pt. 136, unless otherwise specified in the General Permit.<sup>48</sup> On information and belief, Island Cove has failed to conduct the required monitoring and testing under the General Permit and has failed to submit the required monitoring reports to DEEP.

**6) Island Cove discharges into impaired waters, therefore Island Cove must meet certain criteria.**

The Connecticut River and downstream receiving waters are impaired, as defined by the General Permit.<sup>49</sup> Industrial activities that discharge to impaired waters, such as those conducted by Island Cove, are required to meet certain criteria identified in the General Permit.<sup>50</sup> Island Cove has discharged and continues to discharge into an impaired water without an established Total Maximum Daily Load (“TMDL”) and has failed to comply with the requirements of Section 5(c)(5) and 5(e)(1)(D) of the General Permit.<sup>51</sup> Island Cove has also failed to maintain compliance under the General Permit.<sup>52</sup> These criteria can apply even if the discharge is to receiving waters that are not specifically identified as impaired waters on a Section 303(d) list, where DEEP determines that the discharge is not controlled as necessary to meet water quality standards in a downstream water segment.

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<sup>44</sup> *Id.* at § 5(e).

<sup>45</sup> *Id.* at §§ 5(f)(8)(Sector H)(D), 5(f)(9)(Sector I)(D).

<sup>46</sup> *Id.* at § 5(e)(1)(D).

<sup>47</sup> *Id.* at § 5(e)(2)(A).

<sup>48</sup> *See* GENERAL PERMIT, *supra* note 2, at § 5(e)(2)(D)(i); *see also* 40 C.F.R. § 136. This does not include acute toxicity biomonitoring tests, as stated in the GENERAL PERMIT § 5(e)(2)(D)(ii).

<sup>49</sup> *See* GENERAL PERMIT, *supra* note 2, at § 2 (defining ‘Impaired waters’ as “those surface waters of the state designated by the commissioner as impaired pursuant to Section 303(d) of the Clean Water Act and as identified in the most recent State of Connecticut Integrated Water Quality Report”).

<sup>50</sup> *Id.* at § 5(g).

<sup>51</sup> *Id.* at § 5(g)(1).

<sup>52</sup> *Id.* at § 5(e)(1)(D).

**7) Island Cove must comply with reporting and record keeping requirements.**

Island Cove must maintain and submit to DEEP any and all required monitoring data.<sup>53</sup> Required monitoring data includes: stormwater monitoring reports (SMR) identifying all discharges;<sup>54</sup> inspection reports, summarizing the scope and description of the inspections, as well as major observations, actions taken and updates made to the SWPPP;<sup>55</sup> semiannual benchmark monitoring reports;<sup>56</sup> an Exceedance Report that must be submitted to DEEP if any of the follow-up monitoring shows any exceedance of a numeric effluent limit;<sup>57</sup> and any other required reports under the General Permit.

For each measurement or sample taken pursuant to the requirements of the General Permit, Island Cove must maintain records that include: the place, date, and time of sampling and the time the discharge started; the person(s) collecting the samples; the dates and times the analyses were initiated; the person(s) or laboratory that performed the analyses; the analytical techniques or methods used; and the results of all analyses.<sup>58</sup> All records and information resulting from the monitoring activities required by the General Permit, including all records of analyses performed and calibration and maintenance of instrumentation, must be retained for a minimum of five years following the expiration of the General Permit.<sup>59</sup> Moreover, Island Cove has a duty to correct and report any violations immediately upon learning of such a violation(s).<sup>60</sup> On information and belief, Island Cove has failed to maintain the required records and failed to submit all required monitoring data and reports.

**8) Island Cove must comply with additional requirements located in Section 5(f)(8)(Sector H) and Section 5(f)(9)(Sector I) of the General Permit.**

As noted above, the General Permit contains various requirements that are specific to Marinas, Yacht Clubs and Boat Dealers (SIC Codes 4493, certain 7797 and 5551) and Ship and Boat Building and Repair (SIC Code 373). These requirements—many of which are listed above—are detailed in Sections 5(f)(8)(Sector H) and 5(f)(9)(Sector I) of the General Permit. On information

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<sup>53</sup> *Id.* at § 5(h)(3).

<sup>54</sup> *Id.* at § 5(e)(2)(A).

<sup>55</sup> *Id.* at § 5(d)(1)(B).

<sup>56</sup> *Id.* at § 5(e)(1)(B)(v).

<sup>57</sup> *Id.* at § 5(e)(1)(F)(ii).

<sup>58</sup> *Id.* at § 5(h)(1)(A).

<sup>59</sup> *Id.* at § 5(h)(2).

<sup>60</sup> *Id.* at § 6(b).

and belief, Island Cove has failed to comply with the additional requirements of these Sections of the General Permit.<sup>61</sup>

In addition, Island Cove must assure that any activities authorized under the General Permit are conducted in accordance with the following conditions under General Permit Section 5(a):

- General Permit Section 5(a)(3): There shall be no distinctly visible floating scum, oil or other matter contained in the stormwater discharge. Excluded from this are naturally occurring substances such as leaves and twigs provided no person has placed such substances in or near the discharge.
- General Permit Section 5(a)(4): The stormwater discharge shall not result in pollution due to acute or chronic toxicity to aquatic and marine life, impair the biological integrity of aquatic or marine ecosystems, or result in an unacceptable risk to human health.
- General Permit Section 5(a)(5): The stormwater discharge shall not cause or contribute to an exceedance of the applicable Water Quality Standards in the receiving water.
- General Permit Section 5(a)(6): Any new stormwater discharge to high quality waters (as defined in the Water Quality Standards) shall be discharged in accordance with the Connecticut Anti-Degradation Implementation Policy in the Water Quality Standards manual.

On information and belief, Island Cove has failed to comply with these requirements.

Moreover, in Section 5(i) of the General Permit, DEEP incorporated by reference certain state regulations that set forth the duties of lawful NPDES permit holders. On information and belief, Island Cove is also violating these obligations. These duties include:

- complying with all terms and conditions of a NPDES permit;
- properly operating and maintaining facilities and systems for wastewater collection, storage, treatment and control;
- using approved methods for disposal of any screenings, sludges, chemicals and oils and any solid or liquid wastes resulting from wastewater treatment;
- maintaining practices, procedures and facilities designed to prevent, minimize and control spills, leaks or such other unplanned releases of all toxic or hazardous substances and any other substances as the commissioner deems necessary to prevent pollution of the waters of the state; and

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<sup>61</sup> *Id.* at § 5(f)(8)(Sector H)(C–E) (detailing Addition Plan Requirements, Additional Inspection Requirements, and Additional Monitoring Requirement); *id.* at § 5(f)(9)(Sector I)(C–D) (detailing Addition Plan Requirements and Additional Inspection Requirements).

- taking all reasonable steps to minimize or prevent any discharge in violation of the permit or any discharge which has a reasonable likelihood of adversely affecting human health or the environment.<sup>62</sup>

In sum, Island Cove's discharge of stormwater associated with industrial activities without a permit and Island Cove's failure to apply for, obtain coverage under, and comply with the above-listed conditions of the General Permit—or an individual NPDES permit—constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342(p).

### **DATES OF VIOLATION**

Each day on which Island Cove Marina, LLC and Island Cove Too, LLC operates its Facility without permit coverage or discharges stormwater and/or process wastewater without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Island Cove has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since the commencement of Island Cove's operation at the Facility (or Oct. 1, 1992, whichever is later) on which there has been a measurable precipitation event. Each day on which Island Cove operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Every day, since at least 1999, on which Island Cove has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the General Permit for the Discharge of Stormwater Associated with Industrial Activity issued by DEEP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A). These days of violation have continued consecutively since October 1, 1992, when Connecticut's first general permit for the discharge of stormwater associated with industrial activity came into effect, or the commencement of Island Cove's operation at the Facility, whichever is later.

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

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<sup>62</sup> See Regulations of Connecticut State Agencies §§ 22a-430-3 (e)–(h), (p), which are incorporated into the General Permit in Section 5(i)(1).

## **RELIEF REQUESTED**

Island Cove Marina, LLC, Island Cove Too, LLC, and the Facility owner(s) and operator(s) are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Island Cove to a penalty of up to \$37,500 per day per day per violation for all Clean Water Act violations occurring between January 12, 2009 and November 2, 2015; up to \$51,570 per day per violation for all CWA violations occurring after November 2, 2015 and assessed on or after August 1, 2016 but before January 15, 2017; and up to \$52,414 per day per violation for all Clean Water Act violations occurring after November 2, 2015 and assessed on or after January 15, 2017, pursuant to § 309(d) of the CWA, 33 U.S.C. § 1319(d), and the regulations governing the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4.<sup>63</sup> CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Island Cove to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

## **CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

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<sup>63</sup> See 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.





Sincerely,

A handwritten signature in blue ink, appearing to read 'Zachary K. Griefen', is written over a horizontal line.

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